

JUDGE LYNCH

DUANE MORRIS LLP

Attorneys for Plaintiffs

744 Broad Street, Suite 1200

Newark, New Jersey 07102

Telephone No. (973) 424.2000

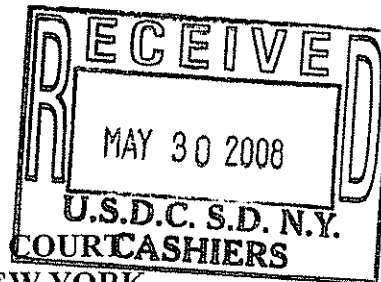
Facsimile No. (973) 424.2001

Email: JWCabin@duanemorris.com

AGKominsky@duanemorris.com

Counsel for Plaintiff ST. PAUL

FIRE & MARINE INSURANCE COMPANY



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**ST. PAUL FIRE & MARINE
INSURANCE COMPANY,**

Plaintiff,

v.

TORTUE, LTD.,

Defendant.

Index No.

ECF CASE

**COMPLAINT FOR DECLARATORY
JUDGMENT IN ADMIRALTY**

Plaintiff, St. Paul Fire and Marine Insurance Company ("St. Paul"), by its attorneys, Duane Morris LLP, for its Complaint for a Declaratory Judgment against Defendant, Tortue, Ltd. ("Tortue"), alleges on information and belief:

1. Plaintiff is a corporation organized and existing pursuant to laws of the State of Minnesota, maintains its principal place of business in the State of Minnesota and is in the business of writing, *inter alia*, marine insurance.

2. Defendant, Tortue Ltd., is a citizen of the State of New York with its principal place of business located at 527 Madison Avenue, 20th Floor, New York, New York, 10022.

JURISDICTION AND VENUE

3. Plaintiff brings this action for a declaratory judgment pursuant to 28 U.S.C. § 2201, et seq., and Rule 57 of the Federal Rules of Civil Procedure. This is a real and justiciable controversy.

4. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and within the admiralty jurisdiction of this Court pursuant to 28 U.S.C. § 1333.

5. The Court also has jurisdiction pursuant to 28 U.S.C. § 1332, as the parties' citizenship is diverse and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

FACTS

7. On or about April 2, 2007, St. Paul issued Quay Marine Insurance Policy No. YM02900232-01 (the "Policy") to Tortue as the Named Insured, effective for a one year period. The Policy contains terms and conditions which are fully incorporated herein at length. A true and correct copy of the Policy is attached hereto as Exhibit "1."

8. The application for insurance submitted on behalf of Tortue sought insurance for the vessel ISLAND TIME.

9. The application for insurance submitted on behalf of Tortue represents that the ISLAND TIME had a 2000 16 ft. Novurania Yacht Tender.

10. Tortue did not request coverage for the 22 ft. Pursuit vessel named TWO KISSES ("TWO KISSES").

11. Tortue did not identify or disclose the TWO KISSES as a yacht tender for ISLAND TIME.

12. The Policy was requested by, delivered to and received by Tortue in New York.

13. The Policy provided insurance coverage, *inter alia*, against certain risks of liability defined in the Policy relative to the ownership, use or maintenance of the 77 ft. 2000 Grand Alaskan vessel ISLAND TIME subject to a limit of \$2,000,000, as fully set forth in the Policy.

14. The Policy defines "Yacht" as:

Yacht means any vessel you own for which an amount of coverage is shown on the Declarations Page and/or any amendatory endorsement page, including its hull, spars, sails, machinery, furniture, tenders and personal watercraft, and all other fittings and equipment on board used for the routine safe operation or maintenance of such vessel. "Tenders" and "personal watercraft" must be used in conjunction with and capable of being carried aboard such vessel.

THE CLAIM

15. Tortue has reported to St. Paul that that on May 5, 2007 the TWO KISSES was allegedly involved in an accident near Little Abaco Island, Bahamas in which the operator John Lee Russell was fatally injured, a passenger aboard the TWO KISSES suffered personal injury, and the TWO KISSES was damaged beyond repair (the "Accident").

16. On or about May 21, 2007, Tortue submitted a claim to St. Paul for coverage under the Policy for liability alleged for the death of John Lee Russell, personal injury to a passenger, and for damage to the TWO KISSES (the "Claim").

17. At the time of the reported Accident in the Bahamas, the TWO KISSES was powered by a 175 horsepower engine.

18. At the time of the reported Accident in the Bahamas, the ISLAND TIME was in Florida.

19. At the time of the reported Accident in the Bahamas, the TWO KISSES was being operated independent of the ISLAND TIME.

20. The TWO KISSES was never carried aboard the ISLAND TIME.

21. The TWO KISSES was not capable of being carried aboard the ISLAND TIME.

22. The TWO KISSES was never disclosed to St Paul.

23. The TWO KISSES was never requested to be covered under the Policy.

24. Tortue never requested that the TWO KISSES be added for coverage under the Policy.

25. On June 15, 2007, St. Paul denied coverage for the Claim on the grounds, *inter alia*, that the TWO KISSES was not covered by the Policy, it was not owned by Tortue, Ltd., it was not a “tender” or “personal watercraft” used in conjunction with and capable of being carried aboard the ISLAND TIME, it did not qualify as a “Newly Acquired Vessel”, and under the terms of the Policy generally.

26. On October 19, 2007, Tortue requested that St. Paul reconsider its denial of the coverage for the Claim.

27. After reconsideration, St. Paul wrote to Tortue on November 20, 2007 maintaining the denial of coverage for the Claim.

28. On January 4, 2008, Tortue demanded coverage for the Claim under the Policy and threatened instituting suit against St. Paul if coverage was not afforded for the Claim.

FIRST CAUSE OF ACTION

29. St. Paul repeats and realleges each and every allegation contained in Paragraphs 1 through 28, inclusive, of this Complaint, as if fully set forth at length herein.

30. The Policy does not provide coverage for property damage or liability arising out of the ownership, use or maintenance of the TWO KISSES.

31. There is no coverage under the Policy relative to the Claim or the Accident because the TWO KISSES is not an insured vessel, Yacht or Tender under the Policy.

32. The Court should issue a declaratory judgment that (1) the Policy does not provide coverage for the Claim or the Accident and (2) St. Paul has no liability to Tortue or any other party with respect to the Claim or the Accident.

SECOND CAUSE OF ACTION

33. St. Paul repeats and realleges each and every allegation contained in Paragraphs 1 through 32, inclusive, of this Complaint, as if fully set forth at length herein

34. Neither the Claim nor the Accident are of the type covered under the Policy.

35. The Court should issue a declaratory judgment that (1) the Policy does not provide coverage for the Claim or the Accident and (2) St. Paul has no liability to Tortue or any other party with respect to the Claim or the Accident.

THIRD CAUSE OF ACTION

36. St. Paul repeats and realleges each and every allegation contained in Paragraphs 1 through 35, inclusive, of this Complaint, as if fully set forth at length herein.

37. In the alternative, if the TWO KISSES is alleged to be covered under the Policy, Tortue failed to disclose the TWO KISSES and the associated risks that Tortue now contends were to be insured.

38. Tortue's failure to disclose the risks associated with the TWO KISSES isolated its duty of *Uberrimae Fidei* to fully disclose all material factors to the risk rendering the Policy and insurance void *ab initio*.

39. Accordingly, in the alternative, St. Paul requests that this Court issue judgment declaring that (1) the Policy does not provide coverage for the Claim or Accident; (2) that St.

Paul has no liability to the insured or any other party for the Claim or Accident; and (3) that the Policy is void *ab initio*.

WHEREFORE, Plaintiff St. Paul Fire and Marine Insurance Company demands judgment of this Court against Defendant Tortue Ltd. declaring that:

(a) Plaintiff, St. Paul Fire and Marine Insurance Company has no responsibility to Defendant Tortue Ltd. or any other party, with respect to the Claim or the Accident under the Policy or otherwise;

(b) Alternatively, the Policy is void *ab initio*;

(c) Plaintiff, St. Paul Fire and Marine Insurance Company be awarded the costs and disbursements of this litigation and the reasonable legal fees hereof; and

(d) Granting such other and further relief as this Court deems just and proper.

Dated: Newark, New Jersey
May 30, 2008

DUANE MORRIS LLP

A Delaware Limited Liability Partnership
744 Broad Street, Suite 1200
Newark, New Jersey 07102
Tel. (973) 424-2000
Fax (973) 424-2001
Email: JWCabin@duanemorris.com
Attorneys for Plaintiff
St. Paul Fire and Marine
Insurance Company

By:



James W. Carbin (JC-5004)

EXHIBIT 1



The St. Paul Fire and Marine Insurance Company

DECLARATIONS PAGE

Policy Number: YM02900232-01

Named Insured:

TORTUE, LTD.

Producer:

MARSH USA, INC.

Address

c/o JOHN RUSSELL-STEWART CORP.
527 MADISON AVE, 20TH FLOOR
NEW YORK, N.Y. 10022

Address

15 MANSELL LANE
PO BOX 789
SOUTHWEST HARBOR, ME 04679
Phone No. (207) 244 7251

Policy Term: From: 04/02/07 To: 04/02/08

Effective dates are 12:01 a.m. local time at the Named Insured's address shown above.

Our insurance coverages for your yacht are stated and explained only in your Marine Agreement. Your Marine Agreement consists of this Declarations page, **THE QUAY** Marine Agreement insuring agreements and any attached endorsements we issue.

COVERED YACHT INFORMATION

Year: 2000 Length: 77' Manufacturer: Grand Alaskan

Name: ISLAND TIME

Mooring Location: PALM BEACH, FL

<u>Section</u>	<u>Coverage</u>	<u>Deductible Amount</u>	<u>Amount of Insurance</u>
A	Property Damage	\$7,875	\$2,100,000
A	Commercial Towing/Emergency Service	N/A	\$7,500
B	Liability	N/A	\$2,000,000
C	Medical Payments	N/A	\$40,000
D	Longshore & Harbor Workers	N/A	Statutory
E	Personal Property	N/A	\$50,000
F	Uninsured/Underinsured Boater	N/A	\$500,000

TOTAL PREMIUM \$18,498.-

Loss Payee: Any loss payments we make under Property Damage, Section A of this policy will be payable to the Named Insured and:

Name: Bank of America, N.A.

Address: NC-1014-13-04 P.O. Box 30120

City, State, ZIP: Charlotte, NC 28254

Attached Endorsements:

Crew Warranty, War Risk and Confiscation, Breach of Warranty, Named Storm
Endorsement

Issue Date: 02/26/07

John A. MacColl *John D. Mackberg*
President Secretary

OM003 Rev. 1-05

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* This is not a certified copy of any policy form. * Actual policy provisions may differ. *



The St. Paul Fire and Marine Insurance Company
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 c/o JOHN RUSSELL-STEWART CORP.
 527 MADISON AVE, 20TH FLOOR
 NEW YORK, N.Y. 10022

Address
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 PO BOX 789
 SOUTHWEST HARBOR, ME 04679
 Phone No. (207) 244 7251

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F	Uninsured/Underinsured Boater	N/A	\$500,000

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City, State, ZIP: Charlotte, NC 28254

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Crew Warranty, War Risk and Confiscation, Breach of Warranty, Named Storm Endorsement

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POLICY FORM LIST

Here's a list of all forms included in your policy, on the date shown below. These forms are listed in the same order as they appear in your policy.

Title	Form Number	Edition Date
THE QUAY Marine Agreement Declarations	OM003	01-05
Policy Form List	40705	05-84
THE QUAY Marine Agreement	OM001	01-05
War Risk and Confiscation Endorsement	OM005	12-03
Crew Warranty	OM007	12-03
Breach Of Warranty	OM009	12-03
Yacht Endorsement	OM018	12-03

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Name of Insured	Policy Number YM02900232-01	Effective Date 04/02/07
Tortue, Ltd.	Processing Date 02/26/07	13:01 001

** This is not a certified copy of any policy form. * Actual policy provisions may differ. **

Issued by St. Paul Fire and Marine Insurance Company

INTRODUCTION

THE QUAY Marine Agreement is your St. Paul Travelers yacht insurance policy. In conjunction with your Declarations Page and amendatory endorsements, if any, it details your yacht insurance coverages. **Please read your policy carefully and keep it in a safe location.**

AGREEMENT

This policy provides the insurance described in return for your premium. You and all covered persons agree to comply with all policy provisions and understand this policy is a legal contract between you and us. This policy applies to any loss occurring while your yacht is afloat and within policy Navigational Limits or when your yacht is stored or transported on land.

DEFINITIONS

Throughout this policy, we use words in their plain English meanings. You and your refer to the named insured shown on the Declarations Page and a spouse living with the named insured. If an entity is shown as a named insured, you and your also means that entity. We, us, and our refer to the Insurance Company stated on the Declarations Page. In addition, other words and phrases are defined as follows:

Policy means the St. Paul Travelers **THE QUAY** Marine Agreement, its most recent Declarations Page and amendatory endorsement page, if any, issued to you.

Yacht means any vessel you own for which an amount of coverage is shown on the Declarations Page and/or any amendatory endorsement page, including its hull, spars, sails, machinery, furniture, tenders, and personal watercraft, and all other fittings and equipment on board used for the routine safe operation or maintenance of such vessel. "Tenders" and "personal watercraft" must be used in conjunction with and capable of being carried aboard such vessel.

Personal Watercraft means any motorized vessel designed to be operated by a person or persons sitting, standing, or kneeling on such vessel rather than within the confines of a hull.

Covered Person means you, a household family member, any captain or crew of your yacht and employed by you, a guest, or any other person or legal entity using your yacht with your prior permission. Covered Person does not include any person or legal entity operating or employed by a marina, yacht club, shipyard, sales agency, or other similar business.

Property Damage means physical loss or destruction to tangible property excluding money, stocks, bonds, mortgages, or other similar instruments.

Bodily Injury means physical harm, including sickness or disease, to the physical health of other persons. Bodily injury includes mental anguish, injury, or illness, emotional distress, required care, loss of services, and death that result from such physical harm, sickness, or disease.

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Navigational Limits: The Navigational Limits of this policy include:

1. the navigable, coastal/tidal waters of the Atlantic Ocean and the Gulf of Mexico and the Bay of Campeche from Newfoundland Island, Canada, to Progreso, Mexico including Bermuda and the Bahamas.
2. the navigable, coastal/tidal waters of the Caribbean Sea not east of 58 degrees west longitude nor south of 10 degrees north latitude with an extension to include the San Blas Islands, Panama.
3. the navigable, coastal/tidal waters of the Pacific Ocean from Anchorage, Alaska, to 10 degrees north latitude.
4. the navigable, inland waters of the United States and Canada.

Exclusions: The Navigational Limits of this policy exclude:

transit of the Panama Canal and the navigable, coastal/tidal waters of Cuba, Haiti, Guatemala, Nicaragua, Colombia, Venezuela, and El Salvador.

PROPERTY DAMAGE COVERAGE: SECTION A

Coverage Provided: We will pay for accidental direct physical loss of or damage to your yacht except as specifically stated or excluded in this policy. The amount of Property Damage Coverage for your yacht is shown on the Declarations Page. The Deductible Amount shown on the Declarations Page applies to each occurrence unless a more specific deductible for that particular property applies. If the loss or damage is caused by a provable manufacturer's defect, caused by fire not originating from your yacht, or results from a collision caused by another vessel, no deductible will apply.

Electronic navigational equipment for your yacht is not subject to a deductible. Electronic navigational equipment does not include the electronic engine management system. Tenders for your yacht are not subject to a deductible except when your vessel tows your tender. We will pay up to fifty percent (50%) of the actual cash value for loss or damage to your tender when it is under tow by your yacht. Personal watercraft coverage is subject to a \$500 deductible.

Payment for a Loss: If your yacht is partially damaged due to a covered loss, we will pay without depreciation, the lesser of the cost to repair or replace the damaged property with property of like kind and quality. But we will pay no more than the amount of Property Damage Coverage shown on the Declarations Page. For the following damaged property over five (5) years of age, we will pay no more than the actual cash value at the time of loss: sails, outboard motors, protective covers, tenders, and personal watercraft.

If your yacht is totally destroyed or lost for more than thirty (30) days, we will pay the amount of Property Damage Coverage shown on the Declarations Page. This amount will be reduced by any amount we paid for a previous loss if the damage from such previous loss was not fully repaired at the time of total loss. We consider your yacht to be a total loss when the cost of recovery and repair of your yacht exceeds the amount of Property Damage Coverage shown on the Declarations Page. If we pay you for a total loss, we reserve the right to take possession of the remains of any insured property or the sale proceeds.

Loss Expense: We will pay up to the amount of Property Damage Coverage shown on the Declarations Page for reasonable costs and salvage expenses you incur or may be obligated to pay to minimize a covered loss and prevent additional loss or damage.

We will also pay up to \$5,000 for reasonable living expenses you, your captain, or your crew incur while at the loss site to minimize a covered loss and prevent additional loss or damage.

Loss Expense payments are not subject to a deductible.

Named Storm Safeguard: We will pay up to \$2,500 for expenses a covered person incurs while safeguarding your yacht from loss or damage when your yacht is in an area where a watch or warning will be declared within the next forty eight (48) hours or has been declared for a named storm.

Bottom Inspection: We will pay the necessary and reasonable costs of inspecting your yacht below the waterline within ten (10) days after a grounding even if no damage is found. No deductible will apply.

Commercial Towing/Emergency Service: We will pay up to the amount of Commercial Towing/Emergency Service coverage shown on the Declarations Page for the following reasonable costs you incur if your yacht is disabled from a cause other than a covered loss:

1. towing to the nearest facility where proper repairs can be made.
2. emergency labor at the breakdown site.
3. the delivery of fuel, oil, battery, or repair parts (excluding payment for the cost of these items).

This coverage is excess of other collectable insurance and not subject to a deductible.

Moped or Motorbike: We will pay for loss of or damage to your moped or motorbike while it is on board your yacht. However, we will not pay more than the actual cash value of such property at the time of loss. This coverage does not apply to loss or damage caused by operational use. This coverage is subject to a \$250 deductible.

Miscellaneous Watercraft: We will pay up to the actual cash value for loss or damage to your sailboards, kayaks, non-outboard powered soft bottom inflatables under twelve feet (12') in length, surfboards, and sailboats under fifteen feet (15') in length used in conjunction with and carried aboard your yacht. However, we will not pay more than \$2,500 per miscellaneous watercraft. This coverage is subject to a \$250 deductible for each occurrence and for each miscellaneous watercraft.

Imminent Danger: We will pay for loss of or damage to your yacht while assisting another vessel in imminent danger. We will also pay up to \$50,000 for loss of or damage to another vessel while such vessel is assisting your yacht while your yacht is in imminent danger. However, we will not pay for such loss or damage if you or another vessel charge a fee for such assistance. This coverage is not subject to a deductible.

Trailer: We will pay up to \$2,500 for accidental direct physical loss of or damage to the trailer you own to transport your tender. This coverage is subject to a \$500 deductible.

Exclusions: We will not provide Property Damage Coverage for any loss or damage caused by or resulting from wear and tear, electrolysis, lack of maintenance, corrosion, deterioration, mold, or fiberglass blistering. We will not provide coverage for any loss or damage to the provisions of your yacht.

LIABILITY COVERAGE: SECTION B

Coverage Provided: We will pay sums a covered person is legally obligated to pay as damages for bodily injury, property damage, or pollution that result during the policy period arising out of the ownership, use, or maintenance of your yacht.

Limits of Liability: The amount of Liability Coverage for your yacht is shown on the Declarations Page. This amount is the most we will pay for claims for bodily injury, property damage, or pollution arising out of any one accident or occurrence or any series of accidents or occurrences arising out of the same event. We will pay no more than this amount regardless of the number of vessels involved, the number of covered persons involved, or the number of claims made.

Wreck Removal: If you are legally required to raise, remove, or destroy the wreckage of your yacht, we will pay up to the amount of Liability Coverage shown on the Declarations Page to do so.

Jones Act/Maritime Law/Death on the High Seas: We will pay for your liability to your paid captain and your paid crew as required by the Jones Act, general Maritime Law, or Death on the High Seas Act, that results during the policy period arising out of the ownership, use, or maintenance of your yacht. However, we will not pay more than the amount of Liability Coverage shown on the Declarations Page.

Operating Other Vessels: We will pay sums you are legally obligated to pay as damages for bodily injury arising out of your use of another vessel with the prior permission of that vessel's owner. However, this coverage does not apply if such vessel is either owned or chartered by a covered person. This coverage is limited to the amount of Liability Coverage shown on the Declarations Page, and does not increase such limit.

We will pay sums you are legally obligated to pay as damages for property damage arising out of your use of another vessel with the prior permission of that vessel's owner, including damage to that vessel. However, this coverage does not apply if such vessel is either owned or chartered by a covered person. This coverage is limited to \$100,000 and our payment for a covered loss is subject to a \$1,000 deductible.

Coral Reef Coverage: We will pay up to \$50,000 for sums a covered person is legally obligated to pay for damage to a coral reef caused by your yacht from any one accident or occurrence or series of accidents or occurrences arising out of the same event. We will also pay up to \$25,000 for sums a covered person is required to pay in governmental fines or penalties for any one accident or occurrence or any series of accidents or occurrences arising out of the same event that results in damage to a coral reef.

Captain/Crew Wage Continuation: We will pay your captain or crew's wages if they are unable to perform their duties on board your yacht as a result of a medically certified cause. However, we will not pay any captain or crew member more than ten (10) days wages during the term of this policy. Our payment will be excess over any valid and collectable payment provided under the Jones Act or general Maritime Law.

Marina as Additional Insured: We will pay sums a marina, yacht yard, or yacht club that stores, repairs, or berths your yacht is required to pay as damages arising out of liability that occurs only as a result of your negligence in the safe operation, maintenance, mooring, berthing, or use of your yacht. We will not waive our rights against any person or entity for their liability for any loss to your yacht.

Exclusions: We will not provide coverage under this Section for:

1. your liability to your spouse or other persons residing in your house.
2. liability of other covered persons to you or your family members.
3. governmental fines or penalties (except as covered under Coral Reef Coverage in this Section).

MEDICAL PAYMENTS COVERAGE: SECTION C

Coverage Provided: We will pay for necessary medical service expenses for bodily injury caused by an accident while boarding, on board, or leaving your yacht during the policy period. Medical expenses means the reasonable charges for medical, repatriation, first aid, x-ray, funeral, hospital, dental, surgical, professional nursing and ambulance services, and prosthetic device expenses. These expenses must be incurred within three (3) years of the accident.

Payment for a Loss: We will pay up to the amount of Medical Payments Coverage shown on the Declarations Page. This amount is the most we will pay for all covered medical

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expenses to each injured person as a result of any one accident or series of accidents arising out of the same event.

When we make a payment under this Section, it is not an admission of liability by you or us.

Exclusions: Except for a paid captain or paid crew member, we will not provide Medical Payments Coverage for bodily injury to:

1. anyone eligible for benefits from any state or federal compensation law or act.
2. trespassers boarding, on board, or leaving your yacht.

LONGSHORE AND HARBOR WORKERS COMPENSATION COVERAGE: SECTION D

Coverage Provided: We will pay for your liability, as required by the provisions of the Federal Longshore and Harbor Workers Compensation Act, that results during the policy period arising out of ownership, use, or maintenance of your yacht. However, this coverage is effective only when insurance is provided under the Liability Coverage section of this policy.

PERSONAL PROPERTY COVERAGE: SECTION E

Coverage Provided: We will pay for loss of or damage to your personal property or the personal property of your guests, captain, or crew when such property is used and stored on board your yacht. Personal property includes fishing tackle, clothing, sports equipment, personal computer hardware, and other personal effects.

Payment for a Loss: We will pay up to the amount of Personal Property Coverage shown on the Declarations Page to repair or replace covered personal property with items of like kind and quality. This coverage is not subject to a deductible.

Firearms Confiscation: We will pay up to \$5,000 for confiscation and resulting loss of your registered firearms on board your yacht while you are in a foreign country.

Fine Arts: We will pay for loss of or damage to your fine arts while such art is on board your yacht. Fine arts means bona fide works of art. However, we will not pay more than \$5,000 per item up to \$50,000 per occurrence under this coverage. This coverage is subject to a \$500 per occurrence deductible.

Fishing Tackle: We will pay the reasonable cost to repair or replace loss of or damage to fishing tackle owned by you, your guests, your captain, or your crew when such fishing tackle is used and stored on board your yacht. However, we will not pay more than the lesser of the amount of Personal Property Coverage shown on the Declarations Page or \$50,000. This coverage is subject to a \$500 deductible.

Passport Coverage: If you lose your passport while you are on board your yacht, we will pay up to \$10,000 for reasonable travel, accommodation, and delivery expenses you incur in obtaining a replacement passport. You must notify your country's consular office within twenty four (24) hours of the loss.

Exclusions: We will not provide Personal Property Coverage for loss of or damage to money, personal checks, travelers checks, credit, debit or bank cards, jewelry, watches, or any valuable papers or documents. Nor will we cover loss of or damage to personal property caused by or resulting from mold, corrosion, mysterious disappearance, or atmospheric changes.

UNINSURED/UNDERINSURED BOATER COVERAGE: SECTION F

Coverage Provided: We will pay sums you or your guests are legally entitled to recover as damages from an uninsured or underinsured boater for bodily injury sustained by you or

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your guests while on board your yacht when such bodily injury is caused by a collision between your yacht and a vessel operated by the uninsured or underinsured boater.

An uninsured boater means an owner or operator of a vessel other than your yacht who is legally responsible for the accident and has no bodily injury liability coverage for such accident, cannot be identified, or has bodily injury liability coverage for such accident but is denied coverage by the insuring company, or the insuring company becomes insolvent. An uninsured boater does not include you, any covered person, or any governmental or civil agency or authority.

An underinsured boater means an owner or operator who is legally responsible for the accident and has bodily injury liability limits that are lower than the Uninsured/Underinsured Boater limits shown on the Declarations Page, and the damages for which such person is liable. An underinsured boater does not include you, any covered person, or any governmental or civil agency or authority.

Payment for a Loss: The amount of Uninsured/Underinsured Boater Coverage for your yacht is shown on the Declarations Page. This amount is the most we will pay for damages for bodily injury arising out of any one accident or occurrence or any series of accidents or occurrences arising out of the same event, and regardless of the number of vessels or injured persons involved, or claims made.

However, we will not pay claims for damages under Underinsured Boater Coverage until the injured person makes a claim and collects, with our written consent, against the underinsured boater's bodily injury liability coverage. Then, we will pay the difference between the underinsured boater's bodily injury liability coverage limit and the Underinsured Boater limit shown on the Declarations Page after we subtract amounts paid or payable for such damages:

1. by or on behalf of those legally responsible;
2. by any state or federal compensation law or act, including the Jones Act, Longshore and Harbor Workers Compensation Coverage;
3. under general Maritime Law;
4. under the liability or medical payments coverage of this policy; or
5. under any healthcare or medical coverage or policy.

This coverage will not apply directly or indirectly to the benefit of any insurer under any state or federal compensation law or act.

Exclusions: We will not provide Uninsured/Underinsured Boater Coverage for:

1. any claim settled with a third party or any consent judgment entered into with a third party without our written consent.
2. any uninsured vessel a covered person owns, charters, or uses.

GENERAL CONDITIONS

Policy Changes: This policy contains all of the agreements between you and us. Any change to these agreements must be issued by us in writing.

Policy Period: The effective dates of your policy are shown on the Declarations Page. Coverage begins at 12:01 a.m. (local time at your mailing address shown) and applies only to an accident, loss, or damage occurring during the policy period.

Concealment, Fraud or Misrepresentation: This policy will be void from inception if you or any covered person intentionally conceals or misrepresents any material fact relating to this insurance, whether before or after a loss.

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Policy Renewal/Nonrenewal: If we agree to renew your yacht policy on its anniversary date, the renewal premium, policy provisions, and guidelines will be those in effect on that date. You may accept our renewal terms by paying the required policy premium on or before the starting date of the renewal policy.

If we decline to renew your yacht policy, we will notify you in writing. Our notice will conform to the legal timeframes and nonrenewal parameters required by law. Notice will be mailed to your last mailing address known to us.

Cancellation:

1. You may cancel this policy at any time by returning it to us or our authorized agent, or by notifying us in writing of the future effective date of cancellation.
2. We may cancel this policy by notifying you in writing of the effective date of cancellation. The effective date of cancellation will be at least ten (10) days after the mailing of such notice. Notice of our cancellation will be mailed to your last mailing address known to us and we will obtain a certificate of mailing.
3. Policy cancellation return premiums, if any, will be calculated on a pro-rata basis.

Conforming to State Law: Any provision in this policy that conflicts with state law is automatically changed to conform to the law.

Transfer of Interest: Coverage under this policy will terminate when you sell, assign, transfer, or pledge your yacht unless we give prior written consent.

Legal Action Against Us: You agree not to bring legal action against us unless:

1. there has been compliance with all of the provisions of this policy;
2. the action is initiated within one year from the date of our declination of loss;
3. a proof of loss is filed and the loss amount has been mutually determined; and
4. under Liability Coverage, Section B, the covered person's obligation is determined by a trial and final judgment or by written agreement among us, you, and the claimant.

Other Insurance: Unless otherwise stated in the policy, if there is other insurance for a covered property damage loss under this policy, we will pay only the portion of loss our applicable amount of insurance bears to the total of all other insurance covering the loss. Unless otherwise stated in the policy, if there is other insurance for any other covered loss under this policy, our coverage will apply only as excess to other insurance covering the loss.

Appraisal: If we fail to reach agreement with you on the amount of loss, either you or we may make a written demand for an appraisal of the loss. Within twenty (20) days after the demand is received, both sides will select a competent, impartial appraiser. The two appraisers will review the loss, and if they come to an agreement, that agreement will be the amount of the loss.

If the two appraisers do not agree, they will select a competent, impartial umpire or ask a judge of a court having jurisdiction to select an umpire. Each appraiser will submit a written report to the umpire. The decision of the umpire will be the amount of the loss.

Each side will pay its appraiser and contribute equally to the umpire's pay and other expenses.

Broadening Coverage: If we broaden the insurance coverage provided by this policy form without additional premium, the broader coverage will apply to this policy.

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Held Covered: If a covered person unintentionally navigates your yacht beyond the Navigational Limits shown in this policy, the policy will remain in effect. You must give us written notice within ten (10) days of the Navigational Limits breach and pay any additional premium for the coverage extension.

Hijack/Kidnap: If your yacht is hijacked and/or you are kidnapped, we will pay up to \$10,000 for professional negotiation expenses towards the return of your yacht or you, when such expenses are incurred within twenty (20) days from the hijack or kidnap.

Search and Rescue: If a covered person is lost overboard from your yacht, we will pay up to \$25,000 for search and rescue expenses you incur to recover such overboard person.

Substitute Yacht: If your yacht is out of commission from a covered loss and, due to matters beyond your control, cannot be repaired and available for your private pleasure use for at least ten (10) consecutive days from the date of such loss, we will pay up to \$25,000 for your charter of another yacht of similar configuration and of equal or lesser value and length to your yacht for up to seven (7) consecutive days. We will not provide this coverage when your charter of the other yacht is for any purpose other than replacing your out-of-commission yacht for your exclusive and personal use.

Charter/Exhibition/Demonstration: We provide coverage while your yacht is on charter. The interests of any charterer of your yacht are included as a Covered Person. We also provide coverage when your yacht is exhibited at an industry sanctioned boat show or when your yacht is being navigated for demonstration purposes.

Under this coverage clause, you warrant that all required licenses, permits and certificates regarding the operation of your yacht are in full force and a qualified captain, approved by us, will navigate your yacht and be in command at all times. Failure to comply with this warranty will void coverage under this clause.

Newly Acquired Vessel: Subject to our underwriting criteria and acceptance at time of purchase, we will provide Property Damage and Liability Coverage for your newly acquired vessel that is under thirty feet (30') in length and has a maximum speed of 55 mph. However, you must acquire such vessel during the policy period, request coverage from us within thirty (30) days of the date you acquired ownership, and pay any additional premium required. This coverage is subject to a property damage deductible of \$2,500. The amount of Liability Coverage is \$500,000.

Exclusions: These exclusions apply to the entire policy. We will not provide coverage for:

1. **Intentional Acts:** We do not provide coverage for loss or damage intentionally caused by a covered person or at the direction of a covered person.
2. **Nuclear, Biological, Chemical:** We do not cover any loss, damage, or expense caused by or resulting from nuclear radiation, radiation, or radioactive contamination. We also do not cover any loss, damage or expense caused by or resulting from an actual or threatened act involving chemical, biological, bio-chemical, electromagnetic weapons, devices, agents, or materials when used in an intentionally hostile manner.
3. **Terrorism:** We do not cover any loss or damage from a certified act of terrorism. For the purpose of this clause, "certified act of terrorism" means any act of terrorism as defined in and certified under the U.S. Federal Terrorism Risk Insurance Act of 2002, or any of its amendments.
4. **War:** We do not cover any loss or damage caused directly or indirectly by war, including undeclared war, civil war, insurrection, rebellion, revolution, warlike acts by military force or military personnel, destruction or seizure for military purpose, and including any consequence of these.
5. **Towing:** We do not cover loss to any vessel your yacht tows except as stated in Section A, Coverage Provided and Imminent Danger clauses.

PROVISIONS AND DUTIES AFTER A LOSS

Notice of Loss: You must notify us or our authorized agent immediately after any loss, damage, accident, or expense that occurs and which may be covered or give rise to a claim under this policy. Your failure to notify us or our authorized agent immediately will render this policy void from inception at our option. This notice must be in writing, state all pertinent facts of the incident, and include the names and addresses of any witnesses to the incident. In addition, you must notify local authorities if your property has been stolen or vandalized.

Proof of Loss: At our written request, you must submit to us a sworn proof-of-loss document describing, in clear language, the facts and details of the loss.

Legal Action Against You: If a claim or suit is brought against you for any liability which is covered by this policy, you agree to immediately submit to us all legal papers or notices you receive. We will pay, up to the amount of coverage shown for Section B, Liability Coverage, the cost of your legal defense and any costs taxed against you in that suit.

Assistance and Cooperation: Any covered person presenting a claim to us will:

1. not assume any liability, obligation, or expense, for which we or you may be liable, without our written consent except expenses incurred to protect your property from further loss or damage;
2. cooperate with us in all aspects of settling the loss and agree to be examined under oath at our request;
3. allow us to examine any of the loss records, including the inventory of damage, and inspect the damaged property prior to repair or disposal; and
4. allow us access to medical reports and any other relevant medical documents and submit to any physical examinations by our selected physicians, performed at our expense and request.

Abandonment: You may not abandon your property to us without our written agreement to accept it.

Our Recovery Rights: If we pay a loss to anyone who has a right to recover from another person, legal entity, or vessel, we assume those recovery rights to the limit of our loss payment amount. The person we paid will cooperate with us in our attempt to recover our payment and will refrain from any action which may be interpreted as prejudicing our recovery rights.

Salvage: When a loss payment is made under this policy, we have the right to the amount of recovery or salvage, if any, up to the amount of our loss payment.

Payment of Loss: We will pay for a covered loss no later than thirty (30) days after our receipt of the sworn proof-of-loss and documentation supporting your insurable interest in the property.

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WAR RISK AND CONFISCATION ENDORSEMENT

Date Issued: 02/26/07

Policy Number: YM02900232-01

Insured:

Tortue, Ltd.

Name of Company: **St. Paul Fire and Marine Insurance Company**

Effective Date: 04/02/07

The War Risk coverage shall extend worldwide. In the event the insured yacht sails for, deviates towards, or is within the territorial waters of any of the Countries or places described in the current exclusions as listed below (including any port area that at the date of this notice constitutes part of such a country or place however it may hereafter be described) additional premium shall be paid at our discretion.

Information of such voyage or deviation shall be given to us as soon as practicable, and the absence of prior advice shall not affect insurance coverage. In the event you do not require continuation of coverage for the insured yacht proceeding into or remaining within an excluded area, you shall advise us before the commencement of such voyage, deviation or period, and it shall be at our discretion whether and on what terms the insurance shall be reinstated.

Current Exclusions

- A. Persian or Arabian gulf and adjacent waters including the Gulf of Oman North of 24 degrees North
- B. Angola (including Cabinda)
- C. Israel
- D. Lebanon
- E. Syria
- F. Libya (including Gulf of Sidra/Sirte)
- G. Eritrea
- H. Gulf of Aqaba
- I. Somalia
- J. All territories within the Republic of Yugoslavia at 1st January 1992, excluding Slovenia
- K. Zaire
- L. Liberia
- M. Georgia (including Abkhazia)
- N. Haiti
- O. Yemen/People's Republic of Yemen (North and South Yemen)
- P. Sri Lanka
- Q. Cuba
- R. Albania

This insurance, subject to the exclusions set forth herein, covers only those risks which would be covered by the attached Policy (including collision liability) in the absence of

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The St Paul

WAR, STRIKES and RELATED EXCLUSIONS clause contained therein but which are excluded thereby and which risks shall be construed as also including:

1. Any mine, bomb or torpedo not carried as cargo on board the Vessel;
2. Any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
3. Civil war, revolution, rebellion, insurrection, or civil strife arising therefrom;
4. Strikes, lockouts, political or labor disturbances, civil commotions, riots, martial law, military or usurped power;
5. Malicious acts or vandalism to the extent only that such risks are not covered by the attached Policy;
6. Hostilities or warlike operations (whether there be a declaration of war or not) but this paragraph (6) shall not include collision or contact with aircraft, rockets or similar missiles, or with any fixed or floating object, or stranding, heavy weather, fire or explosion unless caused directly by a hostile act by or against a belligerent power which act is independent of the nature of the voyage or service which the Vessel concerned or, in the case of a collision, any other vessel involved therein, is performing. As used herein, "power" includes any authority maintaining naval, military or air forces in association with a power.

EXCLUSIONS

This insurance does not cover any loss, damage or expense caused by, resulting from, or incurred as a consequence of:

- a. Any hostile detonation of any weapon of war described above in paragraph (2);
- b. Outbreak of war (whether there be a declaration of war or not) between any of the following countries: United States of America, United Kingdom, France, the Union of Soviet Socialist Republics or the People's Republic of China;
- c. Delay or demurrage;
- d. Requisition or preemption;
- e. Arrest, restraint or detainment under customs or quarantine regulations and similar arrest, restraints or detainments not arising from actual or impending hostilities;
- f. Capture, seizure, arrest, restraint, detainment, or confiscation by the Government of the United States or of the country in which the Vessel is owned or registered.

HELD COVERED AND OTHER PROVISIONS

The held covered clause appearing under the heading ADVENTURE in the attached Policy is deleted and the following clause substituted therefore; -

"Subject to the provisions of the Automatic Termination and Cancellation Clauses below, held covered in the event of any breach of conditions as to loading or discharging of cargo at sea, or towage or salvage activities provided (a) notice is given to the Underwriters immediately following receipt of knowledge thereof by the Assured, and (b) any amended terms of cover and any additional premium required by the Underwriters are agreed to by the Assured."

If at the natural expiry time of this insurance the Vessel is at sea, this insurance will be extended, provided previous notice be given to the Underwriters, for an additional premium at a rate to be named by the Underwriters, until midnight Local Time of the day on which the Vessel enters the next port to which she proceeds and for 24 hours thereafter, but in no event shall such extension affect or postpone the operation of the Automatic Termination and Cancellation Clauses below.

Warranted not to abandon in case of capture, seizure or detention, until after condemnation of the property insured.

The provisions of the attached Policy with respect to constructive Total Loss shall apply only to claims arising from physical damage to the Vessel.

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AUTOMATIC TERMINATION AND CANCELLATION CLAUSES

- A. This insurance and any extension thereof, unless sooner terminated by the provision of section B or C, shall terminate automatically upon and simultaneously with the occurrence of any hostile detonation of any nuclear weapon of war as defined above, wheresoever or whensoever such detonation may occur and whether or not the Vessel may be involved.
- B. This insurance and any extension thereof, unless sooner terminated by the provisions of section A or C, shall terminate automatically upon and simultaneously with the outbreak of war, whether there be a declarations of war or not, between any of the following countries: United States of America, United Kingdom, France, the Union of Soviet Socialist Republics or the People's Republic of China;
- C. This insurance and any extension thereof, unless sooner terminated by section A or B, shall terminate automatically if and when the Vessel is requisitioned, either for title or use.
- D. This insurance and any extension thereof may be cancelled at any time at the Assured's request, or by Underwriters upon 14 days' written notice being given to the Assured, but in no event shall such cancellation affect or postpone the operation of the provisions of sections A, B, or C. Written or telegraphic notice sent to the Assured at his (its) last known address shall constitute a complete notice of cancellation and such notice mailed or telegraphed to the said Assured, care of the broker who negotiated this insurance, shall have the same effect as if sent to the said Assured direct. The mailing of notice as aforesaid shall be sufficient proof of notice and the effective date and hour of cancellation shall be 14 days from midnight Local Time of the day on which such notice was mailed or telegraphed as aforesaid. Underwriters agree, however, to reinstate this insurance subject to agreement between Underwriters and the Assured prior to the effective date and hour of such cancellation as to new rate of premium and/or conditions and/or warranties.

RETURNS OF PREMIUM

The RETURNS OF PREMIUM clause of the attached Policy is deleted and the following substituted therefore:-

"In the event of an automatic termination or cancellation of this insurance under the provisions of sections A, B, C or D above, or if the Vessel be sold, pro rata net return of premium will be payable to the Assured, provided always that a Total Loss of the Vessel has not occurred during the currency of this Policy. In no other event shall there be any return of premium."

THIS INSURANCE SHALL NOT BECOME EFFECTIVE IF, PRIOR TO THE INTENDED TIME OF ITS ATTACHMENT, THERE HAS OCCURRED ANY EVENT WHICH WOULD HAVE AUTOMATICALLY TERMINATED THIS INSURANCE UNDER THE PROVISIONS OF SECTIONS A, B OR C HEREOF HAD THIS INSURANCE ATTACHED PRIOR TO SUCH OCCURRENCE.

AMERICAN HULL INSURANCE SYNDICATE**ADDENDUM NO. 1 TO AMERICAN INSTITUTE HULL WAR RISKS AND STRIKES CLAUSES - DECEMBER 1, 1977 (OCTOBER 1, 1983)**

It is understood and agreed that the American Institute Hull War Risks and Strikes Clauses of December 1, 1977, for attachment to American Institute Hull Clauses (June 2, 1977), and to which this Addendum is attached are amended as follows:

1. For the purpose of this Addendum, only, line 241 of the American Institute Hull Clauses (June 2, 1977, EXCLUSION (a) - shall be deemed amended by adding "confiscation or expropriation."
2. In addition to the risks enumerated in the above described War Risks and Strike Clauses the following is added.
"7. Confiscation or expropriation."

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The **St Paul**

3. Clause (d) of the EXCLUSIONS shall read as follows:

"Capture, seizure, arrest, restraint, detainment, confiscation or expropriation, by the Government of the United States or of the country in which the Vessel is owned or registered."

4. The period of fourteen (14) days provided for in sub-paragraph "D" of the AUTOMATIC TERMINATION AND CANCELLATION Clauses, shall be amended to seven (7) days wherever appearing therein.

ALL OTHER TERMS, LIMITATIONS, CONDITIONS AND EXCEPTIONS REMAINING UNCHANGED.

AMERICAN HULL INSURANCE SYNDICATE

ADDENDUM TO AMERICAN INSTITUTE HULL WAR RISKS AND STRIKES CLAUSES - DECEMBER 1, 1977 (APRIL 1, 1984)

It is understood and agreed that the American Institute Hull War Risks and Strikes Clauses of December 1, 1977, for attachment to American Institute Hull Clauses (June 2, 1977), and to which this Addendum is attached are amended as follows:

1. For the purpose of this Addendum, only, line 241 of the American Institute Hull Clauses (June 2, 1977, EXCLUSION (a) - shall be deemed amended by adding "confiscation or expropriation."
2. In addition to the risks enumerated in the above described War Risks and Strike Clauses the following is added.

"7. Confiscation or expropriation."

3. In the event that the Vessel shall have been the subject of capture, seizure, arrest, restraint, detainment, confiscation or expropriation, and the Assured, by reason thereof, has lost the free use and disposal of the Vessel for a continuous period of twelve (12) months (even though condemnation has not occurred), then for the purpose of ascertaining whether the Vessel is a constructive Total Loss, the Assured shall be deemed to have been deprived of the possession of the Vessel without any likelihood of recovery

"Restraint" as used in this paragraph 3 shall be deemed to include the inability of the Vessel to sail from any port or place to the high seas because of closure of the connecting waterway to all vessels of similar size or draft due to blockage of such waterway caused by hostilities or warlike operations.

4. Clause (f) of the EXCLUSIONS shall be amended to read as follows: "Capture, seizure, arrest, restraint, detainment, confiscation or expropriation, by the Government of the United States or of the country in which the Vessel is owned or registered."
5. The Warranty at line 42 shall be amended to read: "Warranted not to abandon in case of capture, seizure, arrest, restraint, detainment, confiscation or expropriation until after condemnation of the property insured, or, in circumstances set forth in 3. Above, after twelve (12) months, whichever first occurs."
6. The period of fourteen (14) days provided for in sub-paragraph "D" of the AUTOMATIC TERMINATION AND CANCELLATION Clauses, shall be amended to seven (7) days wherever appearing therein.

ALL OTHER TERMS, LIMITATIONS, CONDITIONS AND EXCEPTIONS REMAINING UNCHANGED.

CONFISCATION

It is understood and agreed that the War Risk endorsement attached to this policy is extended to cover loss or damage to property insured directly caused by confiscation, seizure, terrorism, appropriation, expropriation, requisition for title or use or willful destruction by order of the government (whether civil, military or de facto) and public or local authority of the country.

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This coverage extension does not apply to any loss arising from any debt, failure to provide bond or security, or any financial cause, whether under court order or otherwise.

This coverage extension does not apply to any loss arising from the repossession of property by title holder, or arising out of any contractual agreement to which the insured may be a party.

This coverage extension does not apply to delay, deterioration and/or loss of market.

It is warranted that you will comply with all aspects with the laws (local or otherwise) of any country within whose jurisdiction the property may be, but this warranty does not apply to a violation of a charter party without your knowledge.

It is warranted that all permits necessary for the legal operation will be obtained.

Our limit of liability under this extension shall not exceed the amount shown on the Declarations Page of this policy.

All Other Terms and Conditions Remain Unchanged

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CREW WARRANTY

Date Issued: 02/26/07

Policy No.: YM02900232-01

Insured:
Tortue, Ltd.

Name of Company: St. Paul Fire and Marine Insurance Company

Effective Date: 04/02/07

You employ 1 full time or part time professional crew for your yacht shown on the Declarations Page of this policy. We also provide coverage for any additional, temporary crew you employ.

All other terms and conditions remain unchanged.

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BREACH OF WARRANTY

Date Issued: 02/26/07

Policy No.: YM02900232-01

Insured:
Tortue, Ltd.

Name of Company: St. Paul Fire and Marine Insurance Company

Effective Date: 04/02/07

If any of your actions void coverage under this policy, the insurable interest of any Loss Payee shown will remain in effect. The Loss Payee must notify us immediately of any change in ownership or use of your yacht shown on the Declarations Page of this policy when such change becomes known to the Loss Payee.

All other terms and conditions remain unchanged.

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YACHT ENDORSEMENT

Date Issued: 02/26/07

Policy No.: YM02900232-01

Insured:
Tortue, Ltd.

Name of Company: St. Paul Fire and Marine Insurance Company

Effective Date: 04/02/07

Named Storm Endorsement

When your yacht is located south of 35 degrees north latitude between June 1st and November 15th, One of the following conditions shall apply to this policy:

A. You employ a full time professional captain, approved by us, for the yacht shown on the Declarations Page of this policy or,

B. When your Yacht is in an area where a watch or warning will be declared within the next forty eight (48) hours or has been declared for a Named Storm, the Deductible amount shown on the Declarations Page of this policy is increased to Five Percent (5%) of the Physical Damage amount of insurance shown on the Declarations Page of this policy. This Named Windstorm Deductible applies to partial, total and constructive total losses.

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All other terms and conditions remain unchanged.